

BRB No. 03-0587 BLA

ELLA L. HAYNES	)	
(Widow of HOWARD HAYNES)	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
OLD BEN COAL COMPANY	)	
	)	DATE ISSUED: 05/27/2004
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order on Remand – Awarding Benefits of Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

Thomas E. Johnson (Johnson, Jones, Snelling, Gilbert & Davis), Chicago, Illinois, for claimant.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order (2002-BLA-5127) of Administrative Law Judge Rudolf L. Jansen awarding benefits with respect to a survivor's claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act).<sup>1</sup> This is the second time that this

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<sup>1</sup> Claimant is Ella L. Haynes, the miner's widow, who filed her application for survivor's benefits on October 29, 1998. Director's Exhibit 1.

case has been before the Board. In its prior Decision and Order, the Board vacated the administrative law judge's determination that the opinions of Drs. Caffrey and Naeye were hostile to the Act because they stated that simple pneumoconiosis does not progress after coal dust exposure ceases. The Board also vacated the administrative law judge's decision to discredit the opinions of Drs. Renn, Repsher, and Tuteur and remanded the case to the administrative law judge for reconsideration of the medical opinions relevant to 20 C.F.R. §718.205(c). *Haynes v. Old Ben Coal Co.*, BRB No. 01-0825 BLA (July 23, 2002)(unpublished). On remand, the administrative law judge accorded greatest weight to the opinions in which Drs. Green and Cohen determined that pneumoconiosis, both clinical and legal, was a contributing cause of the miner's death. The administrative law judge found, therefore, that claimant established death due to pneumoconiosis pursuant to Section 718.205(c). Accordingly, benefits were awarded.

Employer argues on appeal that the administrative law judge did not properly weigh the medical opinions of record. Claimant has responded and urges affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a brief in this appeal.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Employer contends initially that the administrative law judge erred in discrediting the opinions in which Drs. Renn, Repsher, and Tuteur determined that the miner's death, which was caused by severe obstructive lung disease, was unrelated to dust exposure in coal mine employment. Employer argues specifically that the administrative law judge erred in mechanically discrediting the opinions of Drs. Renn, Repsher, and Tuteur on the ground that their opinions regarding whether coal dust exposure can cause obstructive lung disease conflicted with the scientific evidence cited in the revised definition of pneumoconiosis adopted by the Department of Labor (DOL) in 20 C.F.R. §718.201.

This contention is without merit. Section 718.201 defines pneumoconiosis as a disease having both clinical and legal forms. Pursuant to Section 718.201(a)(2), legal pneumoconiosis is any chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment. 30 U.S.C. §902(b); 20 C.F.R. §718.201(a)(2). These impairments can include any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment. *Id.* In the comments to the revised regulations, the DOL stated that chronic obstructive pulmonary disease (COPD) includes chronic bronchitis, emphysema, and asthma. The DOL also cited studies which support this definition of COPD and indicated that medical

opinions which exclude obstructive lung disorders from occupationally related pathologies are inconsistent with the revised regulations and the prevailing view of the medical community. *See* 65 Fed. Reg. 79938-42, 79969-72 (Dec. 20, 2000).

In his medical opinion, Dr. Repsher stated that there have been no documented cases of coal dust related clinically significant obstruction and disputed the findings reported in several of the studies which the DOL cited in support of the revised definition of pneumoconiosis. Claimant's Exhibit 15 at 49; Employer's Exhibits 6, 14 at 17-19. Dr. Renn indicated that coal dust exposure does not cause or contribute to centrilobular or bullous emphysema. Employer's Exhibit 13 at 15, 27. Dr. Tuteur indicated in his deposition testimony and written reports that coal dust inhalation can cause obstructive lung disease but that this happens "very, very infrequently" in cases in which the miner was a smoker who had no other coal dust related pulmonary process like progressive massive fibrosis or simple pneumoconiosis by x-ray. Employer's Exhibit 10 at 16. Dr. Tuteur also reported that his analysis of the various epidemiological studies indicates that coal dust exposure contributes insignificantly to COPD and that less than 3%, and perhaps only 1%, of miners will develop coal dust related obstructive lung disease. In addition, Dr. Tuteur critiqued several of the studies cited by the DOL in the comments to the revised regulations. Claimant's Exhibit 14 at 24-26; Employer's Exhibits 1, 7, 9, 10.

The administrative law judge reviewed the opinions of Drs. Repsher, Renn, and Tuteur in detail and found that they were entitled to little probative weight because the physicians concluded, contrary to "studies accepted by the Department of Labor (DOL)," that coal dust exposure does not cause clinically significant obstructive lung disease. Decision and Order on Remand at 11-12. We affirm the administrative law judge's finding as it is rational, supported by substantial evidence, and consistent with the position of the DOL. *See Midland Coal Co. v. Director, OWCP [Shores]*, 2004 WL 302390 (7th Cir. Feb. 18, 2004); *Consolidation Coal Co. v. Director, OWCP [Stein]*, 294 F.3d 885, 22 BLR 2-409 (7th Cir. 2002); *Freeman United Coal Mining Co. v. Summers*, 272 F.3d 473, 22 BLR 2-265 (7th Cir. 2001).<sup>2</sup>

Employer also maintains that the administrative law judge erred in finding that Dr. Green's opinion, that coal dust related COPD contributed to the miner's death, was entitled to greater weight than the contrary opinions of Drs. Caffrey and Naeye based upon Dr. Green's qualifications. This contention is without merit. The administrative law judge acted within his discretion in finding that the opinions of Drs. Green and

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<sup>2</sup> This case arises within the jurisdiction of the United States Court of Appeals for the Seventh Circuit, as the miner's coal mine employment occurred in the State of Illinois. Director's Exhibit 2; *see Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

Cohen were documented and well-reasoned because they were supported by “extensive evidence, facts, and studies and both explain the reasons for arriving at the conclusions contained in their reports.” Decision and Order at 10; *see Peabody Coal Co. v. McCandless*, 255 F.3d 465, 22 BLR 2-311 (7th Cir. 2001); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Anderson v. Valley Camp Coal Co. of Utah*, 12 BLR 1-111 (1989). Additionally, the administrative law judge acted within his discretion in finding that Dr. Green’s opinion was “entitled to substantial weight” because he “has devoted his professional career to occupational lung disease research with an emphasis on pneumoconiosis,” written a textbook on occupational lung disease and numerous articles on pneumoconiosis, and has authored or coauthored studies that have been “accepted by the DOL” in its comments on the revised definition of pneumoconiosis. Decision and Order on Remand at 12; *Clark*, 12 BLR 1-149; *Anderson*, 12 BLR 1-111; 65 Fed. Reg. 79939-42 (Dec. 20, 2000). We need not address employer’s allegation of error concerning the administrative law judge’s reference to Dr. Green’s “current research,” as the administrative law judge has provided valid, alternative rationales for according great weight to Dr. Green’s opinion. Decision and Order on Remand at 10; *Searls v. Southern Ohio Coal Co.*, 11 BLR 1-161 (1988); *Kozele v. Rochester & Pittsburg Coal Co.*, 6 BLR 1-378 (1983).

Because employer has not identified any allegations of error requiring remand with regard to the administrative law judge’s finding that claimant has established that legal pneumoconiosis was a contributing cause of the miner’s death pursuant to Section 718.205(c), this finding is affirmed.<sup>3</sup> 20 C.F.R. §718.205(c)(5); *see Zeigler Coal Co. v. Director, OWCP [Villain]*, 312 F.3d 332, 22 BLR 2-582 (7th Cir. 2002); *Peabody Coal Co. v. Director, OWCP[Railey]*, 972 F.2d 178, 16 BLR 2-121 (7th Cir. 1992).

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<sup>3</sup> Employer contends that the administrative law judge erred in crediting the diagnoses of moderately severe simple coal workers’ pneumoconiosis contained in the opinions of Drs. Green and Cohen and their findings that this disease contributed to the miner’s death. We decline to address this argument. Because we have affirmed the administrative law judge’s finding that legal pneumoconiosis was a contributing cause of the miner’s death, error, if any, in the administrative law judge’s findings concerning clinical pneumoconiosis are harmless. *See Underhill v. Peabody Coal Co.*, 687 F.2d 217, 223 n.10, 4 BLR 2-142, 2-150 n. 10 (7th Cir. 1982); *Johnson v. Jeddo-Highland Coal Co.*, 12 BLR 1-58 (1988); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Accordingly, the Decision and Order on Remand – Awarding Benefits of the administrative law judge is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge